IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.728 OF 1988

Sampat @ Shenpadu Trimbak Pinjan)
(Suryawanshi), Age 45, R/o.)
Dewarpade, Taluka Malegaon,)
District, Nashik.)
(presently in the Central Jail,)
Nashik).) ... Appellant
(Orig. Accused No.1)

Versus

The State of Maharashtra.) ... Respondent

Mr. Anilkumar Patil with Mr. Sandeep Salunkhe and Mr. R.N. Gite for the appellant.

Mr. F.R. Shaikh, Addl. P.P. for the respondent.

CORAM: SMT. RANJANA DESAI &
A.S. OKA, JJ.

DATED: 10TH SEPTEMBER, 2004.

ORAL JUDGMENT :- (Per Smt. Ranjana Desai, J.)

1. The appellant (original accused 1) along with two others (original accused 2 and 3) was tried in the Sessions Court of Nashik at Nashik in Sessions Case No.94 of 1988 for the offences punishable under sections 427, 302 read with section 34 of the Indian Penal Code (for short, "the IPC"). By his judgment and order dated 17/8/1988, the learned sessions judge acquitted accused 2 and 3 of all the charges. He, however, convicted accused 1 under section 302 of the IPC and sentenced him to imprisonment for life and fine of Rs.250/- in default, he was to suffer rigorous imprisonment for further 3 months. Accused 1 was acquitted of the offence under section 427

read with section 34 of IPC along with the other accused. Being aggrieved by the said judgment and order of conviction, the appellant-accused 1 has approached this court. For the sake of convenience, we shall refer to the appellant as "accused 1" in this judgment.

2. At the trial, the case of the prosecution was as follows. Deceased Pundlik Sarode was the husband of PW-1 Nirmalabai Pundlik Sarode. He was the brother of PW-2 Deochand Damu Sarode. PW-7 Sundarabai Sahebrao Sonawane is the daughter of accused 1. Accused 2 Motiram is the son of accused 1 Shenpadu. Accused 3 Gangadhar is the maternal uncle of accused 2. At the relevant time, they were residing in Village Dewarpada.

3. According to the prosecution, the deceased teased and tried to outrage the modesty of daughter of accused 1 viz. Sundarabai (PW-7). This is the motive for the commission of the crime. The accused got annoyed with this and decided to do away with deceased Pundlik. They were in search of the deceased. They visited the house of the deceased but could not find him either in the house or anywhere in the village. They abused PW-1 Nirmalabai, wife of the deceased. They even gave threats to her. They also damaged the oil engine and pipe line in the field of the deceased. Out of fear, PW-1 Nirmalabai and her husband deceased Pundlik left the village and went to the house of Nirmalabai’s father Karbhari, who is a Head Constable. They told Karbhari

about the abuses and threats given by the accused. On 28/11/1987, the deceased alone left the house of his father-in-law. He was carrying in his hand one nylon bag containing seeds of cucumber and bottle of insecticide. On the same day, the deceased returned to his village. According to the prosecution, the deceased was last seen in the company of the accused in the same night. On the next day, the dead body of the deceased was found in the field outside the village. It appears that on 10/12/1987, PW-13 Ravindra Kadam, who was at the relevant time, Dy.S.P. in charge of Malegaon Division Police Station, received a report that crime No.311 of 1987 under section 302 read with section 34 of IPC was registered at the Police Station. The complaint was registered by P.I. Sonawane on 10/12/1987. On 10/12/1987 itself, the investigation was taken over by PW-13 Ravindra Kadam. After carrying out the investigation, the accused came to be charged as aforestated.

4. In support of its case, the prosecution examined as many as 13 witnesses. The defence of the accused was one of denial. They claimed that they were innocent and they were falsely implicated.

5. After perusing the evidence on record, the learned trial judge acquitted accused 2 and 3 and convicted accused 1 as aforesaid and, hence, this appeal.

6. We have heard, at some length, Mr. Patil, the learned counsel appearing for the appellant-accused 1 and Mr. Shaikh, the learned Addl. P.P. appearing for the State. With the assistance of the learned counsel, we have gone through the evidence and the record of the case.

7. The prosecution case is based on circumstantial evidence. The circumstances, which the learned trial judge has held to be proved are the presence of motive; the fact that deceased Pundlik died of poison said to have been administered to him; that accused 1 had poison in his possession and that accused 1 had opportunity to administer poison to deceased Pundlik. So far as the last circumstance is concerned, the prosecution heavily relies on the evidence of PW-4 Kashinath, who, it is claimed had last seen the deceased in the company of the accused. The learned trial judge has accepted PW-4's evidence as truthful evidence.

8. So far as the case of prosecution that the deceased died of poison is concerned, the same is proved by the prosecution. Dr. Sahebrao Naval PW-10 was at the relevant time, attached to Wadia Hospital. On 29/11/1987, the dead body of deceased Pundlik was brought for post-mortem. On 30/11/1987, he held autopsy on the dead body of the deceased. He found the following external injuries:

"1. Multiple minor abrasions of variable sizes on left arm;

2. Multiple minor abrasions on right thigh.

3. Abrasion 1" x 1" on right arm.

4. Abrasion 1" x 1" on left thigh."

On internal examination, he found the following injuries.

"On internal examination manengis were congested, Plura lyryns and both the lungs were congested."

9. He preserved the viscera for being sent to the Chemical Analyser. The opinion about cause of death was reserved till the receipt of report from the Chemical Analyser. The Chemical Analyser's report dated 20/1/1988 clearly established that insecticide carbofuron was found in the viscera. Thereafter, Dr. Naval opined that the cause of death of the deceased asphyxia due to consumption of carbofuron. Accordingly, he issued the certificate (Ex-24). The question is who administered poison to the deceased.

10. The learned trial judge had held that the motive is

proved. In this connection, he has relied on the evidence of PW-1 Nirmalabai Sarode, PW-2 Deochand Sarode and PW-3 Sunanda Pinjan. So far as PW-1 Nirmalabai is concerned, she has stated that the incident in question took place about eight months back. It was a Monday. At about 7.00 p.m. in the evening, she was present in the house. Her husband deceased Pundlik returned home. He told her that some serious allegations were made against him. He then left for the fields. After sometime, accused 2 and 3 came to her and they made enquiries about deceased Pundlik. She told them that the deceased had gone to the field for sleeping. Thereafter, they again came to enquire about the deceased. Out of fear, that night she went to her father-in-law's house for sleeping. On the next day in the morning at about 8.00 a.m., again accused 3 came there and abused her and threatened her. On the next day i.e. Wednesday in the morning, accused 3 again came there and gave threats to her and her servants. Thereafter, she decided to go to Wadiware, Taluka Igatpuri to the house of her parents as she was frightened. She first went to her sister Asha Shelke. After sometime, her husband deceased Pundlik came there. He was carrying in his hand a plastic bag containing seeds and insecticide. They spent the night in the house of her sister. On the next day, she, her husband Pundlik, her sister Asha and Asha's husband went to Wadiware in rickshaw. She told her father that the accused were giving threats to her husband and also false allegations were made against him. They stayed at

Wadiware on Thursday and Friday. At about 12.00 a.m. in the morning her husband left for Dwearpad. He carried with him plastic bag containing insecticide and seeds. On Sunday, she received wireless message in police station that her husband Pundlik had expired. On the basis of this evidence, the prosecution wants to establish that the accused were on the look out for deceased Pundlik; that they had threatened PW-1 Nirmalabai and they wanted to do away with the deceased. In our opinion, the evidence of PW-1 Nirmalabai does not help the prosecution. It is significant to note that Nirmalabai does not say that accused 1 came to threaten her. She only refers to accused 2 and 3, who have been acquitted by the learned trial judge. Nirmalabai says that on Monday night the deceased went to the field and he came on Wednesday. She states that during this period, the accused were threatening her. But, Nirmalabai does not inform either her father, who is the Head Constable or her father-in-law about it. She does not lodge any complaint to the police. According to her, on Wednesday she went to her father's house because she was scared. The deceased also stayed there. They stayed there on Thursday and Friday. The deceased left her father's house on Saturday morning at 12.00 a.m. It is on Sunday that they got to know that Pundlik had died. Though the deceased did not come home on Saturday night Nirmalabai does not inform the police. She does not ask her father, who is the Head Constable to get in touch with the police. Moreover, in her entire evidence, she

does not refer to the allegation that the deceased had outraged the modesty of Sundarabai Sonawane. She says that her husband had told her that there were some allegations against him. We, therefore, find it difficult to place implicit reliance on a witness, who does not choose to contact the police though her husband was away from home for a long period and, according to her, people were threatening her and were looking for her husband. No motive can be inferred from the evidence of this witness. It is significant to note that her statement is also recorded belatedly. Her evidence, therefore, does not inspire confidence.

11. PW-2 Deochand Sarode's statement also came to be recorded on 11/12/1987. According to Deochand, Rahibai came to his house on Monday and she told him that the deceased had outraged the modesty of her daughter. He has further gone on to say that all the accused had gone to the house of the deceased with sticks in their hands. They were abusing the wife of the deceased and they went towards the field of the accused. PW-1 Nirmalabai, however, does not say that accused 1 had ever come to their house. She does not say that the accused were carrying sticks. We, therefore, find it difficult to place reliance on the evidence of this witness, who has improved upon Nirmalabai's evidence.

12. The star witness of the prosecution, so far as

motive is concerned, is PW-3 Sunanda Pinjan, who was at the relevant time 8 years old. She is a cousin of Sundarabai. She has stated that the deceased had outraged the modesty of Sundarabai. Sundarabai started weeping and she was shouting. She went to call her father. She has stated that the deceased teased Sundarabai in the house of accused 1. We are, unable to place reliance on this witness for the simple reason that PW-7 Sundarabai herself has denied the prosecution story. She has turned hostile. It is, therefore, difficult to accept the version of the child witness that the deceased outraged the modesty of Sundarabai. It is also significant to note that PW-1 Nirmalabai, in her cross-examination, has stated that all the witnesses had come together to Nashik along with all members of her family. It is clear, therefore, that the child witness was all the while in the company of the members of the family of Nirmalabai and the possibility of the child witness being tutored cannot be ruled out. We are unable to place reliance on the testimony of the child witness.

13. We may at this stage, refer to the evidence of PW-9 Shankar Shelke. His evidence is significant because Shankar Shelke states in his cross-examination that the deceased had told him that a false charge was put against him by the accused that he had teased Sundarabai. He has stated that the deceased told him that Sundarabai was sitting with one boy in the hut and he had slapped him. However, he did not make enquiry from the deceased about

the boy. This statement made by Shelke will have an adverse impact on the prosecution case because, whereas Shelke states that it was one boy, who was sitting with Sundarabai and he gave a slap to him, the prosecution case is that at the time when the alleged teasing took place, it was PW-3 Sunanda Pinjan, a girl, who was present and, who witnessed the incident. This casts a shadow of suspicion on the prosecution case that the deceased outraged the modesty of Sundarabai and PW-3 Sunanda Pinjan witnessed it. The prosecution has also examined PW-5 Sahebrao Chikne and PW-6 Magan Dhame to establish that accused 3 abused Nirmalabai. However, we are unable to place reliance on their evidence. Their statements were recorded on 12/12/1987. In the circumstances, we must record that the prosecution has failed to prove motive.

14. So far as the prosecution case that accused 1 had poisonous insecticide with him is concerned, no doubt, PW-1 Nirmalabai has stated about it. But, assuming that accused 1 was carrying poisonous insecticide with him that by itself will not establish that accused 1 administered that poisonous insecticide to the deceased. There must be credible evidence to come to this conclusion. To establish it, the prosecution has heavily relied on the evidence of PW-4 Kashinath Pinjan.

15. We have carefully perused the evidence of PW-4

Kashinath Pinjan and we are unable to concur with the learned trial judge that on the basis of this evidence, it can be concluded that accused 1 was last seen in the company of the deceased. PW-4 Kashinath says that the incident had occurred about 8 months back. It was a Saturday. At about 10.00 p.m. in the night on that Saturday, he was going to answer the call of nature near Mahadeo Temple side. Four to five people were standing near the Mahadeo Temple. He heard accused 1 talking and he was saying that we will drink heavily and we will enjoy. He heard the voice of deceased Pundlik. Deceased Pundlik was saying that he came from Nashik and he wanted to go to his house. Then, he went for answering the call of nature and he did not know where the accused persons went. On the next day, he came to know that the deceased Pundlik was murdered. In the cross-examination, he has stated that the population of his village is 2000 and he knows the voices of all the villagers. The learned trial judge has observed that the evidence of PW-4 Kashinath carries great importance because he had seen deceased Pundlik in the company of accused 1 and three or four other persons few hours before the happening of the incident. We are unable to see how the learned trial judge could have come to this conclusion from the evidence of PW-4 Kashinath. In the entire evidence, there is not a word suggesting that PW-4 Kashinath had in fact seen accused 1 in the company of deceased Pundlik. He has merely said that he heard accused 1 talking and he also heard the voice of deceased Pundlik. Thereafter, he

had gone on to say that he knows the voices of all the villagers. This is an astonishing statement and certainly such a statement cannot be made the basis of conviction under section 302 of the IPC. It cannot be inferred from evidence of Kashinath that accused 1 was talking to the deceased. Identification of accused 1 and the deceased on the basis of their voices can hardly be relied upon. Once the evidence of PW-4 goes, then the vital link in the chain of circumstances is snapped. It is also significant to note that according to Kashinath there were four to five persons with accused 1. In fact, the learned trial judge has observed in the judgment that - "Thus it is amply proved that deceased Pundlik and also the insecticide carbo-furan came in possession of accused Shenpadu and 4-5 other unidentified persons and they had an opportunity to administer poison to the deceased." The learned trial judge has then observed that - "Thus all the circumstances established that accused No.1 Shenpadu alone taken part in the crime along with some unidentified persons."

16. Now, if there were four to five other persons with accused 1 and if they were all in possession of poisonous insecticide, then we do not see as to how assuming it to be true the charge of murder could be said to be made out only against accused 1. The learned judge has recorded that some unidentified persons were also party to the crime. In the absence of any cogent evidence it cannot be said that it is accused 1 who poisoned the deceased.

This is a case which rests on the circumstantial evidence. The circumstances must be cogent and reliable. They must form a chain which should unerringly point out to the guilt of the accused. We are of the opinion that in this case the prosecution has utterly failed to prove the guilt of accused 1 as the vital links in the chain have been snapped. Hence, the impugned judgment deserves to be set aside. Hence, the following order:

O R D E R

(a) "The impugned judgment and order dated 17/8/1988 passed by the Additional Sessions Judge, Nashik, in Sessions Case No.94 of 1988 convicting accused 1 - Sampat @ Shenpadu Trimbak Pinjan (Suryawanshi) for the offence punishable under section 302 of the IPC and sentencing him to imprisonment for life and fine of Rs.250/- in default further rigorous imprisonment for 3 months is quashed and set aside.

(b) Accused 1 - Sampat @ Shenpadu Trimbak Pinjan (Suryawanshi) is acquitted of the said charge. He is on bail. His bail bond stands cancelled.

(c) Appeal is disposed of in the aforestated terms."

(SMT. RANJANA DESAI, J.)

(A.S. OKA, J.)